

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS**

CRAIG CUNNINGHAM, Plaintiff, v. TELEMARKETERS FROM 626-779-8018 AND JOHN/JAME DOES 1-5 Defendants.	§ § § § § § Civil Case No.: _____ § § § §
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PLAINTIFF'S ORIGINAL COMPLAINT

1. The Plaintiff in this case is Craig Cunningham, a natural person who was a resident of Davidson County, Tennessee at all times relevant to the complaint, and currently has a mailing address of 5543 Edmondson Pike, Ste 248, Nashville, TN 37211.

2. Telemarketers from 626-799-8018, 615-682-4015, 423-443-3052, 609-225-5799, 484-891-1779 and several other numbers represent currently unknown defendants that should be identifiable through discovery.

3. John/Jane Does 1-5 are liable parties that should be identifiable through discovery. These parties used multiple different numbers and entities to call the Plaintiff's cell phones over the years and the Plaintiff is working on determining the true identities of these parties through discovery.

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JURISDICTION

9. Jurisdiction of this court arises as the acts arose in this district.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the TCPA, which is a federal statute.

11. This Court has personal jurisdiction over Defendant because Defendant conducts significant amounts of business within this District and is headquartered in this District.

12. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant conducts significant amounts of business within this District.

FACTUAL ALLEGATIONS

13. From 2015 through the present, the Plaintiff received multiple automated phone calls with a pre-recorded message to the Plaintiff's cell phone.

14. These phone calls violated the TCPA in two ways, first by having a pre-recorded message that failed to have the mandated identification information such as the name of the calling entity, maintaining a written do not call policy, training agents on the do not call policy, identification of sellers and telemarketers, which violate 47 USC 227(c)(5) under the FCC's rule making authority in 47 CFR 64.1200(d) which entitles the Plaintiff to \$1500 per call and second by the automated nature of them and by containing pre-recorded messages that were directed to the Plaintiff's cell phone, which violates 47 USC 227(b) and additionally entitles the Plaintiff to an award of \$1500 per call. In total, each call entitles the Plaintiff to recover \$3,000 per call.

VICARIOUS LIABILITY OF THE MANUFACTURERS AND SERVICE PROVIDERS

15. Similarly, the calls were placed with the apparent authority, actual authority, and ratification of the sellers of the products and services.

CAUSES OF ACTION:

COUNT I

Violations of the Telephone Consumer Protection Act (TCPA)

16. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

17. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by placing calls with pre-recorded/automated messages to the Plaintiff's cell phone that lacked the name, address, and phone number of the entity placing the phone calls. These actions violate 47 USC 227(b) and entitle the Plaintiff to \$1500 per call in damages as these were willful actions.

COUNT II

Violations of the Telephone Consumer Protection Act (TCPA)

18. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

19. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by placing unsolicited and unwelcome telephone calls to the Plaintiff's cell phone. These phone calls also violated the TCPA by having an pre-recorded message. These calls also violated 47 USC 227(c)(5) .

ACTUAL DAMAGES

20. Plaintiff has suffered actual injury as a result of Defendant's telephone calls, including, but not limited to:

- Reduced Device storage space;
- Data usage;
- Plan usage;
- Lost time tending to and responding to the unsolicited texts;
- Invasion of Privacy and loss of concentration.

CAUSE OF ACTION:

Violations of the Telephone Consumer Protection Act (TCPA)

21. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

22. The foregoing actions by the Defendant constitute multiple breaches of the TCPA by placing automated calls without the Plaintiff's consent to the Plaintiff's Cell phone.

PRAYER

A. WHEREFORE, Plaintiff, Cunningham respectfully prays and requests that judgment be entered against Defendants as follows:

B. Statutory damages of \$500 for each phone call

C. \$50,000 in actual damages

D. Pre-judgment interest from the date of the phone calls.

E. Punitive damages for all claims in the amount of \$1,000,000.

F. Injunctive relief enjoining Defendants from placing any further telephone calls to Plaintiff's mobile telephones.

G. Attorney's fees for bringing this action as incurred;

H. Costs of bringing this action; and

I. For such other and further relief as the Court may deem just and proper.

Dated: February 24, 2016	Respectfully submitted <u>/s/ Aaron K. Mulvey</u> Aaron K. Mulvey The Law Offices of Aaron K. Mulvey, PLLC State Bar No. 24060309 518 N. Manus Dr. Dallas, TX 75224 Tel: 214-946-2222 Aaron@MulveyLaw.com
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